IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
MONDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MS JUSTICE G.ROHINI
WRIT PETITION NO : 16452 of 2004

Between:

1 Smt.Sake Venkata Ramanamma, w/o Suryanarayana,
D.No.53-23-26, Chaitanyanagar, Maddilapalem, Visakhapatnam.
2 Sri Devata Surya Satya Papa Rao, s/o D.S.M.Gupta,
D.No.48-1-19/1, Lalithanagar, Visakhapatnam.

..... PETITIONERS

AND

1 The Cooperative Tribunal, Visakhapatnam, Visakhapatnam District.
2 Smt.P.Sridevi, w/o Ramakrishna,
Self Styled President of Sri Krishna Co-operative House Building Society Ltd., Regd.No.B 1624, Visakhapatnam.
3 Sri Rani Laxmi Narasinga Rao, s/o Suryanarayana,
Self Styled Secretary, Sri Krishna Co.operative House Building Society Ltd.,
Regd.No.B 1624, Visakhapatnam.
4 Smt.B.Manjula, w/o B.V.Ratnam,
Self Styled Director of Sri Krishna Co.operative House Building Society Ltd., Regd.No.B 1624, Visakhapatnam.
5 Sri Chenna Das, Self Styled Director of Sri Krishna Co.operative House
Building Society Ltd., Regd.No.B 1624, Visakhapatnam.
6 Smt.K.Kanaka Ratnavalli, d/o K.C.Naidu,
Self Styled Vice President, Sri Krishna Co.operative House Building Society Ltd., Regd.No.B 1624, Visakhapatnam
7 Sri Krishna Co.operative House Building Society Ltd., Regd.No.B 1624,
D.No.MIG 11/70, Sector-III, MVP Colony, Visakhapatnam-17.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ, order or direction declaring the order passed by the 1st respondent in MA 64/2004 IN OP 119/2004, DATED 29-7-2004 as arbitrary, illegal and unconstitutional and restrain respondents 2 to 6 herein from acting as Office Bearers of 7th respondent society herein and from taking any decision to alienate or allot any plots covered by various lay-outs of the Society.

Counsel for the Petitioners : Mr.T.NIRANJAN REDDY

Counsel for the Respondents 2 to 6 : Mr. G.Ram Gopal

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.16452 OF 2004

ORDER :

This writ petition is filed seeking a declaration that the order passed by the Co-operative Tribunal, Visakhapatnam dated 29-07-2004 in M.A.No.64 of 2004 in O.P.No.119/2004 is arbitrary and illegal and consequently to restrain the respondents 2 to 6 from acting as office-bearers of the 7th respondent Sri Krishna Co-operative House Building Society Limited, and from taking any decision to alienate or allot any plots covered by various layouts of the society.

Petitioners claim to be the members of the 7th respondent Society. They filed O.P.No.119 of 2004 before the 1st respondent – Co-operative Tribunal, Visakhapatnam under Section 61(3) of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act') seeking a declaration that the respondents 2 to 6 are not validly elected office-bearers of the 7th respondent Society and they are not eligible to hold any office in the 7th respondent Society for the term of the office commenced from 1-7-2002 and for a consequential relief of permanent injunction restraining the respondents 2 to 6 from acting as office-bearers of the 7th respondent Society or from taking any decisions such as procuring site for forming the layouts or disposing of the plots covered by the various layouts of the society by way of allotment or from withdrawing the money of the society from the Bank account. Pending the said O.P., the petitioners filed M.A.No.64 of 2004 seeking interim injunction restraining the respondents 2 to 6 from taking any decision such as procuring site for forming the layouts or disposing of the plots covered by various layouts of the society.

The contention of the petitioners was that after the expiry of the term of the earlier committee, no election was conducted to the 7th respondent Society following the procedure contemplated under the A.P. Co-operative Societies Act and the Rules made thereunder. It is alleged that the respondents 2 to 6 are proclaiming themselves as elected Managing Committee though no election as such was conducted as contemplated under the Act. It is also alleged that the respondents 2 to 4 herein are carrying on the business activities and that the fifth respondent is the Sarpanch and therefore they are disqualified under the Statute and not eligible to hold any office.

The respondents filed a detailed counter-affidavit denying all the allegations made by the petitioners and contending inter alia that an elected body cannot be restrained from functioning pending disposal of the Election Petition before the Tribunal.

The 1st respondent Tribunal having considered the material on record by order dated 29-07-2004 dismissed M.A.No.64 of 2004 holding that the petitioners are not entitled for the interim injunction restraining the respondents from functioning as office-bearers of the Society. The said order is under challenge in this writ petition.

I have heard the learned Counsel for the petitioners Sri T.Niranjan Reddy and Sri G.Ram Gopal, the learned Counsel appearing for the respondents 2 to 7 / caveators and perused the material on record.

The learned Counsel for the petitioners vehemently contended that the 1st respondent Tribunal having accepted the plea of the petitioners that the 2nd respondent is carrying on business activities contrary to the object and scheme of the 7th respondent Society and since there is no dispute with regard to the disqualification suffered by the 5th respondent who is the Sarpanch of a Gram Panchayat erred in dismissing the application for injunction solely on the ground that an elected body cannot be restrained from functioning as office-bearers of the society. The learned Counsel contends that since the specific case of the

petitioners is that no election as such was conducted and even the general body was not called for and that the respondents 2 to 6 on their own proclaiming themselves as elected Managing Committee, the Tribunal ought to have passed appropriate orders to meet the ends of justice till the disposal of the main petition.

On the other hand, the learned Counsel appearing for the respondents 2 to 6 contended that the respondents 2 to 6 are duly elected members of the Managing Committee and on proper appreciation of the material on record, the 1st respondent Tribunal has rightly dismissed the application for injunction and that the same does not warrant any interference.

It is true that the Tribunal below on appreciation of the material on record observed that it is prima facie established that the 2nd respondent herein represents the Builder's Company, but it was further added that basing on the same it cannot be concluded that the said business of the 2nd respondent is against the interest of the society and that the said issue requires to be decided in the main petition on the basis of the oral and documentary evidence that may be adduced by both parties. Hence, the submission of the learned Counsel for the petitioners that the Tribunal below accepted the allegation of disqualifications of the respondents 2 to 6 is unfounded. Even with regard to the objection that the main petition is barred by limitation, the Tribunal below held that the date of knowledge of the petitioners about the elections has to be established by adducing evidence which has to be decided only at the time of the trial in the main petition. In the circumstances, I am of the view that the Tribunal has rightly declined to grant the injunction as prayed for in the light of the settled principles of law that no temporary injunction can be granted restraining the successful party from functioning as office-bearers pending the main Election Petition.

Though the learned Counsel for the petitioners contended that having regard to the facts and circumstances of the case, the Tribunal below ought to have granted at least the alternative relief of restraining

the respondents 2 to 6 from disposing of any of the plots covered by various layouts of the 7th respondent Society, I am unable to be accept the same since it would amount to restraining the respondents 2 to 6 from discharging their lawful functions as office-bearers of the 7th respondent Society and that it would nothing but granting the temporary injunction sought by the petitioners.

For the aforesaid reasons, I do not find any merit in the writ petition and accordingly the same is dismissed. However, having regard to the facts and circumstances of the case, there shall be a direction to the first respondent Tribunal to dispose of O.P.No.119 of 2004 as expeditiously as possible preferably within a period of eight weeks from the date of receipt of this order. No costs.

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20th September, 2004.

gbs

To

1 The Cooperative Tribunal, Visakhapatnam, Visakhapatnam District.

2 Sri Krishna Co.operative House Building Society Ltd., Regd.No.B 1624,
D.No.MIG 11/70, Sector-III, MVP Colony, Visakhapatnam-17.
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